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Message Text

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ACTION L-03

INFO OCT-01 ARA-10 ISO-00 SOE-02 AID-05 CEA-01 CIAE-00
COME-00 DODE-00 EB-08 DOE-11 H-01 INR-10 INT-05
NSAE-00 NSC-05 OMB-01 PM-05 USIA-06 OES-07 SP-02
SS-15 STR-07 TRSE-00 ACDA-12 /117 W
----------080236 020704Z /21
R 012120Z MAR 78
FM AMEMBASSY CARACAS
TO SECSTATE WASHDC 1391

C O N F I D E N T I A L CARACAS 2008

E.O. 11652: GDS
TAGS: ENRG EINV VE
SUBJECT: OIL COMPANY PROBLEMS -TEXACO REFUSES
TO ACCEPT ASSET DEDUCTIONS

REF: (A) CARACAS 1590 (B) CARACAS 1731

1. SUMMARY: MINISTER OF ENERGY HERNANDEZ IS REPORTED
TO HAVE SIGNED AT LEAST SOME OF THE RESOLUTIONS COMPLETING
THE ASSET EVALUAION PROCESS. TEXACO REFUSED TO SIGN THE
ACTA FIXING THE AMOUNT OF ITS DEDUCTION, JOINING EXXON AND
ARCO. BOTH THE MINISTRY AND THE COMPANIES ARE NOW SHIFITNG
THEIR ATTENTION TO THE EARLY RELEASEOF THE MONIES WHICH
WILL REMAIN IN THE GUARANTEE FUND. END SUMMARY.

2. AMINISTRY OF ENERGY OFFICIAL WORKING ON THE ASSET
EVALUATION ISSUE ADVISES US THAT ALL DISCUSSIONS WITH THE
EX-CONCESSIONARIES ON THIS SUBJECT HAVE BEEN CONCLUDED AND
THE MINISTRY IS NOW PREPARING THE FINAL RESOLUTIONS SETTING
FORTH THE AMOUNTS TO BE DEDUCTED IN EACH CASE. HE REPORTED
THAT SOME OF THE RESOLUTIONS HAVE ALREADY BEEN SIGNED BY
MINISTER HERNANDEZ AND THE REMAINDER SHOULD BE SIGNED IN THE
NEXT FEW DAYS. THEY WILL PROBABLY BE SENT TO THE
OFFICIAL GAZETTE LATER IN THE WEEK FOR PUBLICATION.
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3. HE SAID THE REVERSION COMMITTEE HELD ITS FINAL MEETING
WITH TEXACO ON FEBRUARY 24 (REFTELS). TEXACO REFUSED TO
SIGN ITS ACTA EVEN THOUGH THE COMMITTEE HAD AGREED TO
REDUCTIONS IN THE CHARGES AMOUNTING TO 30 MILLION BOLIVARES
(APPROX $7 MILLION) FROM THE AMOUNTS ORIGINALLY ESTABLISHED
BY THE FIELD INSPECTORS. OBVIOUSLY DISAPPOINTED THAT TEXACO

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HAD NOT SIGNED, THE OFFICIAL EXPLAINED THAT THE COMPANY HAD INSISTED TO THE END THAT THE CHARGES ASSESSED AGINST IT SHOULD BE COMPARABLE IN PERCENTAGE TERMS TO THOSE ASSESSED AGAINST THE OTHER COMPANIES. HE SAID THAT HE MINISTRY HAD REDUCED CHARGES WHERE SUCH REDUCTIONS COULD BE JUSTIFIED BY A REASONABLE APPLICATION OR INTERPRETATION OF THE INSPECTION CRITERIA, WITNESS THE REDUCTIONS MADE IN THE CHARGES AGAINST TEXACO AND OTHER COMPANIES. HE WENT ON, HOWEVER, TO EXPLAIN THAT THE APPLICATION OF A STRAIGHT PERCENTAGE TO ALL OF THE COMPANIES COULD NOT BE JUSTIFIED TECHNICALLY, PARTICULALY SINCE SOME COMPANIES, SUCH AS EXXON, CONTINUED TO MAKE LARGE INVESTMENTS IN THE YEARS PRIOR TO NATIONALIZATION, WHILE OTHERS PERFORMED ONLY MINIMAL MAINTENANCE. AS TO THE OTHER COMPANIES WHICH DID NOT SIGN THEIR RESPECTIVE ACTAS, THE OFFICIAL SAID THAT EXXON HAD INDICATED IT WOULD NOT DISPUTE THE CLAIM WHILE IN THE CASE OF ARCO, THE COMMITTEE HAD IDENTIFIED SOME ITEMS WHICH HAD BEEN OVERLOOKED IN THE ORIGINAL ACTA, AND AS A RESULT THERE WOULD BE A REDUCTION IN THE CHARGES AGAINST ARCO (SEE ALSO CARACAS 286 AND 1024).

4. THE OFFICIAL CONTINUED THAT WITH THE ASSET QUESTION NOW ALL BUT SETTLED, THE MINISTRY HAD NOW TURNEDITS ATTENTION TO CLEARNING THE WAY FOR THE RETURN TO THE EX-CONCESSIONARIES OF AT LEAST PART OF THE MONIES WHICH WOULD REMAIN IN THE GUARANTEE FUND AFTER THE DEDCUTION OF THE ASSET CHARGES. (WE ESTIMATE TOTAL ASSET DEDUCTIONS AT ABOUT -125 MILLION; CONFIDENTIAL

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THUS ABOUT $400 MILLION WOULD BE LEFT IN THE GUARANTEE FUND). HE SAID MINISTRY OF ENERGY ATTORNEYS HAVE NOW CONCLUDED THAT THE FUND IS NOT NEEDED TO GUARANTEE PAYMENT OF EITHER THE MISCELLANEOUS BACK TAX CLAIMS OR THE COMPTROLLER'S CLAIM. THEY MAINTAIN THAT THE BACK TAX CLAIMS ARE ALREADY GUARANTEED BY BONDS, THE ONLY TYPE OF GUARANTEE REQUIRED BY THE TAX LAW, AND THESE BONDS HAVE BEEN ACCEPTED AS VALID BY THE TAX AUTHORITIES. HE SAID THIS ARGUMENT HAS ALREADY BEEN ACCEPTED IN PART BY THE ATTORNEYS OF THE MINISTRY OF FINANCE. AS TO THE COMPTROLLER'S CLAIM, THE ENERGY MINISTRY APPARENTLY HOLDS THAT THIS IS STILL ONLY A DISPUTE REGARDING THE APPLICATION OF THE ALW AND DOES NOT, AT LEAST AT THIS POINT, REPRESENT AN OUTSTANDING CLAIM AGAINST THE COMPANIES.

5. TEXACO'S LOCAL REPRESENTATIVE SUBSEQUENTLY CONFIRMED TO US THAT THE COMPANY HAD NOT SIGNED ITS ACTA BECAUSE IT CONSIDERED THE CHARGES TO BE UNJUSTIVIED. HE SUGGESTED IN PASSING THAT IF DEDUCTIONS ARE MADE FROM THE FUND WITHOUT THE COMPANY'S AGREEMENT, THE COMPANY MAY BE ABLE TO CLAIM CONFISCATION. (THE MINISTRY MAINTAINS, AND MOST COMPANIES SEEM TO ACCEPT, THATTHE LAW DOES NOT REQUIRE PRIOR AGREEMENT BY THE COMANIES AS TO THE

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AMOUNT TO BE DEDUCTED FROM THE FUND). REPRESENTATIVES
OF ARCO AND EXXON ALSO CONFIRM THAT THEY HAVE NOT SIGNED
THEIR RESPECTIVE ACTAS, WHILE ALL OTHER COMPANIES HAVE
DONE SO. THERE IS GENERAL AGREEMENT AMONG THE COMPANY
REPRESENTATIVES THAT THE MINISTRY IS ATTEMPTING TO
COMPLETE ACTION ON THIS ISSUE BEFORE MINISTER HERNANDEZ'
MEETING WITH SECRETARY SCHLESINGER NEXT WEEK.

6. THE COMPANIES HAVE ALSO SHIFTED THEIR ATTENTION TO
THE RETURN OF THE AMOUNTS REMAINING IN THE GUAANTEE FUND,
AND THE ARGUMENTS REPORTED IN PARA 4 ABOVE APPEAR TO BE
DRAWN ALMOST COMPLETELY FROM THOSE ADVANCED BY THE COMPANIES.
(SEE CARACAS 871 AND STATE 22920). WHILE THE
MINISTER APPARENTLY HAS THE AUTHORITIY UNDER THE NATIONALI-
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ZATION LAW TO RELEASE THE GUARANTEE FUND, HE IS NOT EXPECTED,
AS A PRACTICAL MATTER, TO TAKE SUCH ACTION WITHOUT THE
CONCURRENCE OF OTHER INTERESTED PARTIES IN THE GOV.
WHILE THE ENERGY MINISTRY OFFICIAL SEEMED OPTIMISTIC
THAT THE LOGIC OF HIS ARGUMENTS WOULD SECURE THE
EARLY RELEASE OF AT LEAST A PORTION OF THE FUND, OUR EXPERIENCE
TO DATE ON THIS SERIES OF ISSUES LEADS US TO BE MORE CAUTIOUS.
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